

Examiner's report

P6 Advanced Taxation (IRL)

December 2012



General Comments

Most candidates completed all questions and appeared to have sufficient time to do so. Some candidates performed very well and scored high marks. Overall the format and presentation of answers was quite good, with appropriate schedules used where necessary.

Specific Comments

Firstly, where candidates did not perform well, they did not have a sufficient knowledge of some of the basics of taxation. This was particularly evident in Question 2, which examined the basic VAT, RCT and payroll concepts. It is clear that some candidates no longer have a working knowledge of the taxation learned at F6 level, and some time may have elapsed since they passed that exam. I would recommend that in future, prior to embarking on a course of study for P6, candidates should spend a few days revising F6 material.

Secondly, I would recommend that candidates spend time diligently learning the conditions of the various reliefs. Most candidates had "some" understanding of the reliefs examined on this paper. (Incorporation relief, Agricultural relief, Business Relief, PPR relief, and Split year residence). However (importantly), successful candidates had a thorough understanding of the reliefs in question and could list the conditions without confusion or omission.

Question One

(i) 1

Most candidates were aware of the conditions to be met to avail of CGT incorporation relief but there were a number of candidates who confused the conditions with Retirement Relief.

(i) 2 and 3

Many candidates did not outline 'the various tax implications' of incorporating the business and instead concentrated on the CGT aspects only. For those candidates who recognised the other tax issues, the common errors were as follows:

- Not recognising that on a transfer for shares, that stamp duty will apply on the transfer of equipment and receivables and that general planning with regard to transfer of equipment by delivery etc would not apply when the transfer is in respect of shares.
- Ignoring possible VAT issues.
- Calculating and allowing a capital loss on the transfer of equipment and not recognising the capital allowances implications.

In considering which option would be preferable, with regard to the transfer of premises, most candidates concentrated on the CGT implication only and did not consider the stamp duty implications. While many candidates recognised that there would be a future 'double hit' to CGT on the transfer of the premises, they omitted to explain that incorporation relief is only a deferral of CGT, a cash-flow advantage, and did not consider this issue in reaching their conclusion.

(ii)

Surprisingly many candidates seemed unaware of the exclusion of 'start-up' relief where the trade was previously carried on by another person.

(iii)

Most candidates recognised the employment of spouse and pension planning as short/medium term planning opportunities.

(iv)

Most candidates recognised that Retirement Relief was a future planning opportunity but did not recognise the potential of ensuring that his spouse, Anna, could qualify if the necessary steps were undertaken now, i.e. issue of shares, full-time working directors etc.

The option of a Buy Back was proposed by a number of candidates but given that the company would be owned only by James (and perhaps his wife) this was not a viable option. More importantly, a buy back will only qualify for CGT treatment if certain conditions are met (e.g. disharmony at board level), and these conditions cannot be planned for!

Question Two

This practical question centred on a range of taxation (and professional) issues which came to light prior to a Revenue Audit. A number of candidates performed very well on this question.

- (a) Candidates were asked to state their concerns as professional advisors and how they would address them. The concerns related to the proposed conduct of the client and bookkeeper prior to and during the audit. Many candidates did not make the very important point that the tax advisor must resign if they are not confident that the client will behave ethically.
- (b) This asked for a strategy to minimise penalties and the correct answer was “prompted voluntary disclosure with co-operation”. A number of candidates suggested “self-correction” and “unprompted disclosures” but these options were not available in a Revenue Audit. In general, this part was dealt with well.
- (c) This examined the candidate’s understanding of a range of basic tax fundamentals (VAT, RCT, PAYE, Income Tax) and required judgement in relation to the category of tax offence and penalty. In relation to the issues raised:
 - (i) In many cases, the VAT implication was overlooked and candidates just calculated an income tax underpayment based on the gross total of €18,000.

When the owner of a VAT registered business personally pockets the proceeds of a cash sale amounting €18,000 and does not or remit the VAT collected from the customer or declare the net amount for income tax, there is a *clear intent* to evade tax and the offence is clearly in the deliberate behaviour category. However many candidates stated that this was carelessness and calculated incorrect penalties thereon.

- (ii) This CGT calculation was generally dealt with competently
- (iii) Many candidates suggested that there were no implications and did not consider RCT.
- (iv) Most candidates recognised the payroll issue, but did not re-gross the income. VAT adjustments were made in many cases (and were not necessary), which reflected an imprecise reading of the question. Clearly the offence of paying a cash bonus and not putting it through the payroll system was in the “deliberate behaviour” category but some candidates treated it as “carelessness”.
- (v) Many candidates did not recognise the 2/3 rule here. This is a basic VAT concept.
- (vi) Most candidates correctly recognised the self-supply VAT implications, but many did not explain income tax implications of the treatment of both materials and labour. Many candidates also classified the offence as “carelessness”, whereas it was clearly deliberate behaviour.

Question Three

This optional question dealt with various corporate issues.

3(i)

Leaving the group and the tax implications of same were correctly and well dealt with by most candidates. Most candidates however did not recognise that the claw back could be avoided if the investment was postponed by one month.



3(ii)

Many candidates correctly identified the stamp duty implications of both options but did not explain any other issues, particularly the latent gains, capital allowances etc.

3(iii)

This part was generally dealt with competently

3(iv)

While most candidates understood and applied the close company provisions well, a number of candidates confused the two loan scenarios and suggested that the loan to Hugh was a distribution and subject to DWT etc and that the loan from Mary was subject to a penalty tax.

Question Four

Overall this optional question was reasonably well answered, but a number of candidates did not allow Agricultural Relief on the basis that neither Leah nor Luke would farm the land (not recognising the fundamental difference between Agricultural Relief and Business Relief).

4(a)

Most candidates considered the value of agricultural assets as a percentage of total assets but there was some confusion with regard to the treatment of farm machinery and cattle.

Most candidates failed to correctly apportion the costs between agricultural and other assets.

Many candidates did not recognise that Leah only got a life interest and did not adjust the value of her assets accordingly.

Some candidates did not apply the correct Class 2 Threshold.

4 (b)(i)

A number of candidates ruled out Agricultural relief at the outset on the basis that Luke would not farm the land. In calculating the CAT, a large number of candidates did not deal with each inheritance separately, but aggregated the two inheritances and incorrectly applied only one Class Threshold, i.e. Class 1.

Where candidates carried out separate calculations, the incorrect threshold was applied in respect of Luke's inheritance from Ben.

4 (b)(ii)

This part was generally poorly answered. Few candidates suggested forward planning for Agricultural Relief.

4(c)

Few candidates understood the implications of disclaimers in general and in particular the implications of disclaiming in favour of someone. Very few candidates recognised that a disclaimer in favour of someone means that the person is deemed first to have inherited the property which means that inheritance taxes are not avoided.

Question Five

5 (a)

Most candidates recognised the relevant relief in question was 'split year relief' but many were unsure of its implications and in particular that it only applied to employment income.

5(b)

A number of candidates concentrated on the residence status in 2012 and did not consider the residence status in 2013 which was key to qualifying for split year relief from 2012. A number of candidates did not consider the 280 day test in 2013.

Other candidates showed a lack of understanding of territorial rules in general by suggesting Mary leave as early as possible in 2012 so she would not be taxed on foreign income unless she remitted it.



5 (c)

This part was largely well dealt with. A number of candidates however did not recommend planning options to Mary, e.g. sell before 1 April 2013 and avail of 'last 12 months rule' and she could still purchase an apartment in Carrivea.

5(d)

This part was not well answered.

Some candidates referred to tax implications of share options and not receipt of shares.

Many candidates seemed unaware of the exemption for profit sharing schemes for income tax purposes and the conditions for exemption.